way, we may conclude that the case of the Estate of Jobson[14] was rightly decided. But in bringing this comment to a close we would submit that the way is deplorably dark. Though favoring the conclusion reached by the court, we cannot feel sure that the general doctrine which the case supports, namely, that the rights arising from the relation created by adoption extend even to a right of intestate succession in the survivor of the parties to the adoption, to the estate of the other, is altogether consistent with the language of our succession statute.[15] For example, can an adopted child be properly said to be the "issue" of the adopting parent? Certainly so to maintain necessitates an unusual perversion of the term.[16] And this is but one of numerous kindred doubts which must present themselves on closer study. Further, our statutory provisions respecting the matter of adoption lack to an extreme extent that degree of completeness and explicitness which should be theirs, especially in view of the fact that in this instance the common law cannot be relied on to supply deficiencies in the substantive law of the codes. These faults become the more apparent upon an examination of the related provisions in the French and German civil codes,[17] which are admirably concise and complete, and which cover specifically almost all of the questions which may conceivably arise as to the effects of adoption upon the rights and duties of the parties concerned, among others the precise question presented in the Estate of Jobson.[18] From these considerations the desirability of a thorough revision of that portion of the Civil Code of California which covers the matter of adoption would seem unquestionable. J. U. C., Jr.

Bills and Notes: Rights of the Holder After the Drawer's Death.— Action by the holder of a check given for value against the bank and the administrator of the drawer's estate. Both demurred to the complaint and the court below sustained their demurrers. The District Court of Appeal reversed the judgment below and as the basis of its decision re-

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[14] (1912), 44 Cal. Dec. 655; 128 Pac. 938.

[15] Civil Code of California, § 1386.

[16] It has, however, been so interpreted in California [Estate of Newman (1888), 75 Cal. 213, 219; 16 Pac. 887.], but with a discussion so brief as to be quite unsatisfactory in removing the doubt which the use of the word raises. Would it not appear, rather, that neither of the words, "child," or "issue," is definitive of the other, but that both are used in the sense of "lawful issue?" The three terms are used interchangeably in our statute of succession (Civil Code, § 1386), and the expression "lawful issue" being by far the most specific and definite would naturally seem to be determinative of the legislative intent. And it would seem obvious that an adopted child cannot be "lawful issue," for that term denotes the fruit of a lawful marriage.

[17] French Civil Code, § 343 to § 360; German Civil Code, § 1741 to § 1772.

[18] French Civil Code, Secs. 351, 352; German Civil Code, Sec. 1759.

lied upon an extract from Daniel on Negotiable Instruments:[1] "Now where a check is given to the payee for a valuable consideration, the authority of the payee to collect the amount from the bank is coupled with a vested interest in the check. . . . and it is anomalous to hold that his death in any wise lessens his obligation, or the right of the bank to pay it when given for value."[2]

The view that the relation between the drawer and payee of a check is one of agency coupled with an interest cannot be maintained. Even if it be conceded that the check confers an agency on the payee, an agency that amounts to an authority coupled with an interest is one that is united with an interest in the subject upon which the power is exercised. It is not enough that the interest exists in what is produced by the power.[3]

The relation between the bank and the depositor is that of debtor and creditor. But in addition to this relation, the deposit is made with the tacit understanding that the bank shall respond to the depositor's orders so long as there is sufficient balance to his credit.[4]

The better view of the depositor's check is that it is a revocable order or authority for the bank to pay a certain sum and that it does not confer upon the holder any interest in the fund drawn against.[5] Applying this rule, it is generally held that as between the holder of a check and the bank, the bank is not liable to the holder for its refusal to pay the check, although it has in its possession funds of the drawer sufficient for that purpose.[6] The reason for the rule is that the bank upon which the check is drawn has no contract with the payee, and is under no obligation to him. The drawer of the check has not satisfied his obligations to the payee by giving him a piece of paper.

In Illinois, however, a check operates as an equitable assignment pro tanto of the fund drawn against.[7] This theory is open to the objection

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[1] Nassano v. Tuolumne County Bank (1912), 15 Cal. App. Dec. 825.

[2] Daniell, Negotiable Instruments, Sec. 1618b, Sec. 1587.

[3] Hunt v. Roasmanier (1823), 8 Wheat. 174, 5 L. Ed. 589; Langdon v. Langdon (1855), 4 Gray 186.

[4] Morse on Banks and Banking, Sec. 311; Watson v. Phoenix Bank (1844), 8 Met. (Mass) 217; Downes v. Bank Charleston (1844), 6 Hill (N. Y.) 297.

[5] See note 5 Annotated Cases 189; Donohue Kelly Banking Co. v. S. P. Co. (1902), 138 Cal. 183, 71 Pac. 93 (containing view of Cal. cases); Pullen v. Placer County Bank (1902), 138 Cal. 169, 71 Pac. 83, 94 Am. St. Rep. 19; Fourth Street Bank v. Yardley (1896), 165 U. S. 643, 41 L. Ed. 855; Florence Min. Co. v. Brown (1887), 124 U. S. 385, 31 L. Ed. 424.

[6] Bank of the Republic v. Millard (1869), 10 Wall. 152, 25 L. Ed. 529; First National Bank v. Washington (1876), 94 U. S. 343; Carr v. Natl. etc. Bank (1871), 107 Mass. 45, 9 Am. Rep. 6; Breman v. Merchants etc. Bank (1886), 62 Mich. 343, 28 N. W. 881; Fourth National Bank v. Yardley (1896), 165 U. S. 534, 41 L. Ed. 855; Dicta, Pullen v. Placer County Bank (1902), 138 Cal. 169, 71 Pac. 83, 94 Am. St. Rep. 19.

[7] See note 5 Annotated Cases, p. 190; Wyman v. Ft. Dearborn Na-

that it is not consistent with negotiability. It is one of the fundamental rules of negotiable paper that a bill or note must be payable generally and not out of a particular fund. The payee relies upon the general credit of the drawer and not the existence of a given fund. Accordingly, the majority of jurisdictions have rightly rejected this theory.

The interesting question is suggested of the right of the bank to pay the check and charge it up to the drawer's account. Where the bank pays the check in ignorance of the death of the drawer, it is universally admitted that the payment will be allowed to charge the depositor.[8] But if the bank have notice of the death before paying, the courts differ as to the course the bank should pursue. This question is closely associated with that of the right of the holder of a check to sue the bank and with that of the right of the depositor to stop payment and depends, as do those questions, on the legal significance of a check. If we are to follow the Illinois view of equitable assignments, we must hold that the bank is not only justified, but that it is bound to pay the check. But if we adopt the prevailing rule that a check is an order to the bank to pay, we must come to the conclusion that the authority conferred is revoked upon the death of the depositor.[9] For at that time his account vests in the legal representatives and they alone have the right to direct payment which the bank may charge against the account.

The situation bears a direct analogy to that of bankruptcy. The appointment of a trustee in bankruptcy vests title in him.[10] In the case of bankruptcy of the drawer a holder of a check can only claim "pari passu" with the general creditors. It would be a fraud on the other creditors to hold otherwise. So in the case of a deceased person, the rights of the creditors vest as of the date of the death of the deceased, and if the estate is insolvent the payment of the check would be a fraud upon the other creditors. There is nothing inequitable in the rule that death revokes a check. The payee has his remedy against the drawer's estate. Commercial business and the convenience of banks and depositors seem to require the enforcement and maintenance of such a rule.[11] W. H. S.

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tional Bank (1899), 181 Ill. 283, 54 N. E. 946; National Bank of America v. Indiana Bank ing Co (1885), 114 Ill. 483, 2 N. E. 401.

[8] Morse on Banks and Banking, Sec. 400 N. 2, dictum in Tate v. Hilbert (1793), 2 Ves. jr. 111, 30 Eng. Rep. 548, dictum in Breman v. Merchants National Bank (1886), 62 Mich. 343, 28 N. W. 881; See 2 Parsons N. & B. 82; See Grant on Bankers and Banking, p. 48 n.; Story on Promissory Notes, Sec. 498a.

[9] Bankruptcy Act (1898), Sec. 70a.; In re Breslauer (1903), 121 Fed. 910; Bank v. Sherman (1879), 101 U. S. 403; Mueller v. Nugent (1901), 184 U. S. 1.

[10] Weiands Admin. v. St. Natl. Bank (1901), 112 Ky. 310, 65 W. 617.

[11] For general discussion of subject, see 17 H. L. R. 104, 3 Col. Law Rev. 285, 2 Col. Law Rev. 171, 17 H. L. R. 52.